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10/058,401	01/30/2002	Vincent De Laforcade	05725.1014-00	5421

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EXAMINER

BOMBERG, KENNETH

ART UNIT	PAPER NUMBER
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3754

9

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/058,401

Applicant(s)

DE LAFORCADE, VINCENT

Examiner

Kenneth Bomberg

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-292 is/are pending in the application.
- 4a) Of the above claim(s) 18,51,81,114,147,177 and 193-292 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17,19-50,52-80,82-113,115-146,148-176 and 179-192 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Withdrawal of Undue Multiplicity Rejection

1. The rejection of claims 1-17, 19-50, 52-80, 82-113, 115-146, 148-176, and 178-192 under 35 USC § 112, second paragraph, as being repetitious and multiplied has been withdrawn.

Specification

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title "Device for Dispensing Product" describes the majority of the apparatus patents and publications in class 222 (Dispensing).

Claim Objections

3. Claims 37, 44, 45, 152, and 182 are objected to because of the following informalities:

In Reference to Claim 37

In line 1, "the at least one fixing region" lacks antecedent basis. It appears that the claim should depend from --claim 36-- rather than "claim 35".

In Reference to Claims 44 and 45

In line 1, "the at least one fixing region" lacks antecedent basis. It appears that the claim should depend from a claim other than "claim 34".

In Reference to Claim 152

In lines 3-4, "said first material and second material" lacks antecedent basis. It appears that the claim should depend from a claim other than "claim 130".

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In Reference to Claim 182

In lines 1-2, “wherein the pouch is fixed longitudinally to an interior of the container along at least on fixing region” is redundant with a limitation of claim 161 from which it depends.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 27, 60, 90, 122, 156, and 186 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims recite the limitation ADMER grade SF 600, ADMER grade SE 800, ADMER grade SF 620E, LOTADER grade TX8030, and LOTADER grade HX8020 in lines 2-3. It is important to recognize that a trademark or trade name is used to identify a source of goods, and not the goods themselves. If a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, then the claim does not comply with the requirements of 35 USC 112, second paragraph (see MPEP 2173.05(u)). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product.

Double Patenting

6. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

7. Applicant is advised that should claim 31 be found allowable, claim 190 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 7-10, 13, 20, 21, 29-33, 34, 35, 40-43, 46, 53, 54, 62-64, 97, 98, 100-106, 109, 116, 117, 125-129, 130, 131, 133-139, 142, 149, 150, 158-160 and 190 are rejected under 35 U.S.C. 102(b) as being anticipated by Gueret (5,505,338).

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In figures 1-3 and the disclosure associated with the identified reference numbers, Gueret teaches (Inter alia) of a:

A device for dispensing a product (1), comprising: a container (4); a flexible-walled pouch (2) inside the container, the flexible-walled pouch comprising an interior; a product contained in the interior of the pouch; a dip tube (27) extending in the interior of the pouch, the dip tube having a free end (30) located substantially at a mid-point of an axial height of the pouch; an airless pump (8) in fluid communication with the interior of the flexible-walled pouch via the dip tube; and at least one passage (6) configured to allow air entry into the container and outside of the pouch, wherein pressure in the interior of the pouch, at least prior to first use of the device, is less than or substantially equal to atmospheric pressure; wherein the flexible pouch comprises a substantially non-elastically deformable material; wherein the device is configured so that substantially all of the product contained in the pouch is dispensed via the airless pump regardless of whether the device is oriented in a head-up position or a head-down position.

According to the independent claims identified above, further with respect to the dependent claims note:

Dispensing head (9), dispensing orifice (21), and use with cosmetic products (column 1, lines 22-23).

10. Claims 97, 98, 100-106, 109, 116-118, 121, 122, 124-129, 130, 131, 133-139, 142, 149-151, 154, 155, and 157-160 are rejected under 35 U.S.C. 102(b) as being anticipated by Stone (4,322,020).

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In figures 1 and the disclosure associated with the identified reference numbers, Stone teaches (Inter alia) of a:

A device for dispensing a product (1), comprising: a container (6); a flexible-walled pouch (2) inside the container, wherein the flexible pouch comprises a substantially non-elastically deformable material, and the flexible-walled pouch comprising an interior; a product contained in the interior of the pouch; a dip tube (4) extending in the interior of the pouch; an airless pump (3) in fluid communication with the interior of the flexible-walled pouch via the dip tube; and at least one passage (7) configured to allow air entry into the container and outside of the pouch, wherein pressure in the interior of the pouch, at least prior to first use of the device, is less than or substantially equal to atmospheric pressure, and wherein the device is configured so that substantially all of the product contained in the pouch is dispensed via the airless pump regardless of whether the device is oriented in a head-up position or a head-down position.

According to the independent claims identified above, further with respect to the dependent claims note:

Outer container of rigid polystyrene (Example 4), flexible pouch of polyethylene or polypropylene (column 4, lines 9-17), pump thread connection (unnumbered Fig. 3, pump closure 13), dispensing head (16), dispensing orifice (17), and use with cosmetic products (column 1, lines 13-16).

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11. Claims 97, 115, 130, and 148 are rejected under 35 U.S.C. 102(b) as being anticipated by Ellion et al. (5,497,911).

In figures 1-2 and the disclosure associated with the identified reference numbers, Ellion et al. teaches (Inter alia) of a:

A device for dispensing a product (1), comprising: a container (7); a flexible-walled pouch (5) inside the container, the flexible-walled pouch comprising an interior; a product contained (6) in the interior of the pouch; a dip tube (3) extending in the interior of the pouch; an airless pump (2) in fluid communication with the interior of the flexible-walled pouch via the dip tube; and at least one passage (7a) configured to allow air entry into the container and outside of the pouch, wherein pressure in the interior of the pouch, at least prior to first use of the device, is less than or substantially equal to atmospheric pressure, and wherein the device is configured so that substantially all of the product contained in the pouch is dispensed via the airless pump regardless of whether the device is oriented in a head-up position or a head-down position (column 1, lines 54-56).

12. Claims 130-132, 134-146, 151, 152-154, 157, 161-162, 164-176, 181-184, 187, and 191-192 are rejected under 35 U.S.C. 102(b) as being anticipated by Kogyosho (JP 09077136 A)¹.

In figures 4-5 and the associated English language translation associated with the identified reference numbers, Kogyosho teaches (Inter alia) of a:

A device for dispensing a product (1), comprising: a container (11); a flexible-walled pouch (12) inside the container, the flexible-walled pouch comprising an interior;

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a product contained in the interior of the pouch; a dip tube extending in the interior of the pouch; an airless pump (Detailed Description § [0024]), in fluid communication with the interior of the flexible-walled pouch via the dip tube; and at least one passage (14) configured to allow air entry into the container and outside of the pouch, wherein pressure in the interior of the pouch, at least prior to first use of the device, is less than or substantially equal to atmospheric pressure, and wherein the device is configured so that substantially all of the product contained in the pouch is dispensed via the airless pump regardless of whether the device is oriented in a head-up position or a head-down position.

Further with respect to the dependent claims note:

Kogyosho teaches a plurality of “N” fixing regions (13A-D), pouch contacting dip tube (Detailed Description § [0029-0031]), the pouch having four sides (Figs. 4-5), polyethylene outside layer (Detailed Description § [0015]), and threading for pump attachment (Fig. 3, 3).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

¹ With respect to Kogyosho, see applicant supplied English language abstract and examiner supplied computer generated translation. An English language translation (human) of the entire document has been internally ordered by the examiner and will be made of record after receipt.

14. Claims 1-17, 22-33, 34-50, 53-64, 65-79, 80, 83-96, 97-113, 116-129, 130-146, 149-160, 161-176, and 179-192 rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyosho (JP 09077136 A)² in view of Gueret (5,505,338).

In figures 4-5 and the associated English language translation, Kogyosho teaches (Inter alia) of a device for dispensing a product (1) comprising a container (11), a flexible walled pouch (12) inside the container, a product in the pouch, a dip tube extending in the interior of the pouch, a pump (Detailed Description § [0024]), and at least one passage (14) substantially according to the claims.

Kogyosho, is silent as to the particulars of the dip tube. Gueret also teaches in figures 3-4 and the accompanying disclosure (Inter alia) of a device for dispensing a product (1) comprising a container (4), a flexible walled pouch (2) inside the container, a product in the pouch, a dip tube (27 and column 4, lines 27-47) extending into and having a free end located substantially at a mid point of an axial height of the interior of the pouch, a pump (8), dispensing head (9), and at least one passage (6) substantially according to the claims.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted the specific pump (8) and dip tube (27) of Gueret for the nonspecific pump and dip tube and pump of the dispensing device of Kogyosho in order to prevent the walls of the flexible pouch from bonding against one another and trapping a volume of the product as explicitly taught by Gueret.

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Further with respect to the dependent claims note:

Kogyosho teaches a plurality of “N” fixing regions (13A-D), pouch contacting dip tube (Detailed Description § [0029-0031]), the pouch having four sides (Figs. 4-5), polyethylene outside layer (Detailed Description § [0015]), and threading for pump attachment (Fig. 3, 3).

In Reference to Claims 24, 27, 57, 60, 90, 123, 156 and 186

Kogyosho teaches the exemplary use of ADOMA™ but indicates that other adhesives may be used (MEANS § [0015-0017]). It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted ADMER™ for ADOMA™ as an adhesive in the product dispensing device since Kogyosho suggests the use of alternative adhesives, and since ADMER™ is commercially known for the purpose of bonding a container inner and outer layers³.

In Reference to Claims 26, 59, 89, 122, 155, and 185

Kogyosho teaches the use of nylon for the pouch rather than polypropylene and polyethylene. Gueret teaches the use of polypropylene and polyethylene for the pouch due to their very small extent of shape memory to facilitate complete emptying of the pouch (column 4, line 60 to column 5, line 17). It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted the nylon

² With respect to Kogyosho, see applicant supplied English language abstract and examiner supplied computer generated translation. An English language translation (human) of the entire document has been internally ordered by the examiner and will be made of record after receipt.

³ See Kobayashi et al. (5,711,454) column 7, lines 6-9 in support of this assertion, these claims have been treated as best interpreted in view of the improper use of a Trademark in the claim.

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bag material of Kogyosho with the polypropylene and polyethylene pouch material of Gueret to facilitate complete emptying of the pouch as explicitly taught by Gueret.

In Reference to Claims 30, 31, 63, 64, 93, 94, 126, 127, 159, 160, 189, and 190

Kogyosho teaches the dispensing of a product from the pouch but does not specify the product. Gueret teaches the dispensing of a cosmetic product from the pouch (column 1, lines 20-23). It would have been obvious to one having ordinary skill in the art at the time of the invention to have contained a cosmetic product in the dispensing device of Kogyosho as modified by Gueret because Gueret teaches that cosmetic products can be advantageously dispensed from such devices for dispensing products.

In Reference to Claims 53-54, 83-84, 116-117, 149-150, and 179-180

Kogyosho teaches one or more air passages (14) and suggests a variety of locations for the passages (Detailed Description § [0013]) but does not clearly specify them being in the bottom of the container. Gueret teaches air passages being in a bottom of the container (6, column 3, lines 59-60). It would have been obvious to one having ordinary skill in the art at the time of the invention to have located the air passages on the bottom of the container because Kogyosho specifies alternative locations for air passages and because the location of the air passage is not critical and because Gueret teaches that the bottom location is a known equivalent location in the art for air passage.

15. Claims 1, 19, 34, and 52 rejected under 35 U.S.C. 103(a) as being unpatentable over Ellion et al. (5,497,911) in view of Gueret (5,505,338).

In figures 1-2 and the associated disclosure, Ellion et al. teaches (Inter alia) of a device for dispensing a product (1) comprising a container (7), a flexible walled pouch (5) inside the container, a product in the pouch, a dip tube extending in the interior of the pouch (3), a pump (2), and at least one passage (7a) substantially according to the claims.

Ellion et al., is silent as to the particulars of the dip tube. Gueret also teaches in figures 3-4 and the accompanying disclosure (Inter alia) of a device for dispensing a product (1) comprising a container (4), a flexible walled pouch (2) inside the container, a product in the pouch, a dip tube (27 and column 4, lines 27-47) extending into and having a free end located substantially at a mid point of an axial height of the interior of the pouch, a pump (8), dispensing head (9), and at least one passage (6) substantially according to the claims.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted the specific pump and dip tube (27) of Gueret for the pump and dip tube of the dispensing device of Ellion et al. because a perforated tube used by Ellion et al. is an art known equivalent for the claimed dip tube as explicitly taught by Gueret (column 4, lines 40-43).

16. Claim 82 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyosho (JP 09077136 A)⁴ and Gueret (5,505,338) as applied to claim 65 above, and further in view of Segati (Des. 338,828).

⁴ With respect to Kogyosho, see applicant supplied English language abstract and examiner supplied computer generated translation. An English language translation (human) of the entire document has been internally ordered by the examiner and will be made of record after receipt.

Kogyosho and Gueret together suggest a device for dispensing product substantially according to claim 82, but do not suggest per se, the cross sectional area defined by the pouch is at a maximum substantially at the mid-point of the axial height and decreases gradually away from the midpoint. Both Kogyosho and Gueret suggest containers of alternative shapes. Segati suggests a device for dispensing product having a cross sectional area defined by the device being at a maximum substantially at the mid-point of the axial height and decreases gradually away from the midpoint. This is suggested for purposes of aesthetics. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated the design shape of Segati into the dispensing device of Kogyosho and Gueret to improve the aesthetics as taught by Segati. When the teaching of Segati is applied, the inner pouch would necessarily conform to the shape of the outer container according to the teachings of Kogyosho, and would consequently meet the claim limitation.

17. Claim 178 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyosho (JP 09077136 A)⁵ in view of Segati (Des. 338,828).

Kogyosho suggest a device for dispensing product substantially according to claim 178, but does not suggest per se, the cross sectional area defined by the pouch is at a maximum substantially at the mid-point of the axial height and decreases gradually away from the midpoint. Kogyosho suggests containers of alternative shapes. Segati suggests a device for dispensing product having a cross sectional area defined by the

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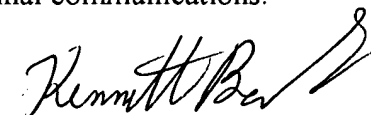
device being at a maximum substantially at the mid-point of the axial height and decreases gradually away from the midpoint. This is suggested for purposes of aesthetics. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated the design shape of Segati into the dispensing device of Kogyosho to improve the aesthetics as taught by Segati. When the teaching of Segati is applied, the inner pouch would necessarily conform to the shape of the outer container according to the teachings of Kogyosho, and would consequently meet the claim limitation.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The remaining prior art listed on the attached FORM PTO-892 have been included because they teach pouches in vented containers having contents dispensed by pumps.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Bomberg whose telephone number is (703) 308-2179. The examiner can normally be reached on Monday-Thursday from 9:30 AM - 7:00 PM. The examiner can also be reached on alternate Fridays.

The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications.


KENNETH BOMBERG
PRIMARY EXAMINER
ART UNIT 3754

K.B.
March 31, 2004

⁵ With respect to Kogyosho, see applicant supplied English language abstract and examiner supplied computer generated translation. An English language translation (human) of the entire document has been internally ordered by the examiner and will be made of record after receipt.